

BEFORE THE
BOARD OF EDUCATION
STOCKTON UNIFIED SCHOOL DISTRICT
SAN JOAQUIN COUNTY, CALIFORNIA

In the Matter of the Non-Reemployment of
the Certificated Employees of the Stockton
Unified School District Identified in
Exhibit A:

OAH No. 2011010763

PROPOSED DECISION

Administrative Law Judge Ann Elizabeth Sarli, Office of Administrative Hearings (OAH), State of California, heard this matter in Stockton, California, on April 18, 19 and 20, 2011.

Diana D. Halpenny and Megan Covert Russell, Attorneys at Law, Kronick, Moskovitz, Tiedemann & Girard, represented the Board of Education, Stockton Unified School District.

At hearing, several respondents were dismissed from the proceeding due to: (1) failure to file a timely Notice of Defense; (2) entry into stipulation to withdraw the Notice of Defense; and/or (3) the District's rescission of the Notice of Non-Reemployment. The respondents remaining in the action are listed in Exhibit A, which is attached hereto and incorporated herein.

Respondents were represented as follows:

- Ernest H. Tuttle, IV, Attorney at Law, Law Offices of Ernest Tuttle, IV, represented Alejandro Duran, Martha Magana-Ruley, Carly Moore, Julie Pagnini, Julio Perez, Elizabeth Wieland and Vicki Zeyen.
- Jane Kanestrom, Ping Lo and Lee Xiong represented themselves.
- Chansophorn Sam filed a Notice of Defense, but did not appear at hearing.
- Thomas J. Driscoll, Attorney at Law, Driscoll & Associates, represented the remaining respondents.

■ Heidi Primack Talbot, Attorney at Law, of the Talbot Law Group, represented Michael Cayton and Charlene Clark Mah in the proceedings. On April 16, 2011, Ms. Talbot notified OAH that the District had rescinded Michael Cayton's Notice of Non-Reemployment and Charlene Clark Mah had withdrawn her request for hearing.

Oral and documentary evidence was presented and the parties offered oral closing arguments. The record was then closed and the matter was submitted for decision on April 20, 2011.

FINDINGS

1. Ron Small, PhD, is the Interim Assistant Superintendent, Human Resources, of the Stockton Unified School District (District). His actions, and those of the District's staff and governing body, the Board of Education (Board), were taken solely in their official capacities.
2. The District is facing a budget shortfall for the 2011-2012 school year of at least \$28.3 million.
3. On February 22, 2011, the Board adopted Resolution No. 10-27, reducing or eliminating particular kinds of services (PKS), affecting 294.55 Full Time Equivalent certificated positions (FTE).
4. The Resolution states that it was necessary to reduce the following PKS of the District not later than the beginning of the 2011-2012 school year:

PARTICULAR KINDS OF CERTIFICATED SERVICES TO BE REDUCED OR ELIMINATED

	SERVICE	F.T.E.	Sub-Totals	Totals
1.	<u>Administrative Services</u>			
	A. Small Learning Communities Site Coordinators	3.00		
	B. Director of Program Improvement	1.00		
	C. Preschool Program Manager	0.50		

D. Continuation High School Assistant Principal II	0.50	
E. K-8 Assistant Principals/Program Managers II	11.00	
F. Administrator on Special Assignment [Music Coordinator]	1.0	
Total	17.00	

2. **Counseling Services**

A. K-8 Counseling Services	4.25	
B. 9-12 Counseling Services	5.50	
C. Child Welfare and Attendance Counselors	2.00	
D. Student Assistance Program (SAP) Program Specialists Teaching Services	1.00	
Total	12.75	

	<u>SERVICE</u>	F.T.E.	Sub- Totals	Totals
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3. **K-12 Teaching Services**

A. Elementary Teaching Services (Multi-Subject credentialed)	127.00	
B. Arts Resource Teachers	33.00	
C. K-8 Program Specialists Teaching Services	2.00	
D. Numeracy Specialist [Nightingale charter conversion]	0.40	

E. Literacy Specialist [Nightingale charter conversion]	0.40
F. Secondary English Teaching Services	21.00
G. Secondary Drama Teaching Services	1.00
H. Secondary Social Science Teaching Services	14.50
I. Secondary Social Science/English Teaching Services	1.00
J. Secondary Math Teaching Services	17.00
K. Secondary Spanish Teaching Services	7.00
L. Secondary Spanish/Drivers Education/Health Teaching Services	1.00
M. Secondary French Teaching Services	1.00
N. Secondary Biology Teaching Services	5.00
O. Secondary Physics/Chemistry Teaching Services	1.00

	SERVICE	F.T.E.	Sub-Totals	Totals
	P. Secondary Integrated Physical Science Teaching Services	1.00		
	Q. Secondary Chemistry Teaching Services	1.00		

R. Secondary Earth Science Teaching Services	1.00
S. Secondary Chemistry/ Environmental Science Teaching Services	1.00
T. Secondary Earth Science/ Biology Teaching Services	2.00
U. Secondary Business Teaching Services	5.00
V. Secondary Physical Education Teaching Services	6.00
W. Secondary Music – Choral Teaching Services	1.00
X. Secondary Music – Band/Guitar Teaching Services	1.00
Y. Secondary Art Teaching Services	3.00
Z. Secondary Automotive Technology Teaching Services	1.00
AA. Secondary Health/Sports Science Teaching Services	1.00
BB. Secondary Health Teaching Services	1.00
CC. Secondary Food/Nutrition Teaching Services	1.00
DD. Secondary Masonry Teaching Services	1.00

	SERVICE	F.T.E.	Sub-Totals	Totals
	EE. Secondary Digital Art	1.50		

Teaching Services

FF. Secondary Multi-Media Technology Teaching Services 2.00

GG. Secondary Child Development/Computer Education/ Desktop Publishing Teaching Services 1.00

HH. 9-12 Program Specialists Teaching Services 1.00

Total 264.80

TOTAL 294.55

5. As a result of the above PKS reductions and/or eliminations, the Board determined that it was necessary to decrease 294.55 FTE positions for certificated employees in the District at the close of the 2010-2011 school year, in accordance with Education Code section 44955.¹

6. On March 15, 2011, the Superintendent, Carl Toliver, gave the Board written notice of his recommendation that notice be given to respondents that their services would not be required for the ensuing school year, and the reasons therefore. The Board directed the Superintendent to take all appropriate action needed to effectuate the PKS reductions and/or eliminations, including the sending of appropriate notices to all employees whose positions would be affected by virtue of this action.

7. On March 15, 2011, Dr. Small timely served a letter entitled "Subject: Recommendation that Services Will Not Be Required" (Preliminary Notice) on each of the permanent and probationary certificated employees affected by the PKS reductions and/or eliminations set forth in the Resolution.² The Preliminary Notice advised that it had been recommended to the Board that the recipient be given preliminary written notice that his/her services might not be required for the 2011-2012 school year, due to reductions in PKS.

¹ All statutory references are to the California Education Code unless otherwise indicated.

² "Precautionary" Preliminary Notices were served on certain employees, advising them that the District's initial determination, after reviewing the seniority list, was that they be retained. The notice advised that the employee may be challenged by other employees at hearing and it may be determined that the recipient should be laid off.

8. All the respondents in this action³ timely filed a Request for Hearing to determine whether there was cause for not reemploying them for the 2011-2012 school year.

9. On March 25, 2011, Carl Toliver made and filed the Accusation, and caused it to be served on respondents or their legal counsel. Respondents timely filed Notices of Defense.

Implementation of Lay Off Procedure

10. In anticipation of the PKS reduction, Sharon Fite, Personnel Analyst, and her staff began updating the District's computerized seniority list. In December 2010, they produced a first draft and sent it to the bargaining units and school sites. They circulated verification forms to allow employees to report inaccurate information and request corrections. The staff received proposed corrections, researched this information and, when appropriate, updated the seniority list. The revised seniority list was generated in February 2011. It was sent to the school sites and bargaining units and was posted on the District website.

11. After the Resolution was adopted, District staff identified the individuals serving in the positions affected by the PKS reductions. District staff used the updated seniority list to identify vacant positions and to identify the least senior persons occupying the positions affected by the PKS reductions. District staff took into account known attrition and existing vacancies.

12. When the least senior persons occupying the positions affected by the PKS reductions were identified, District staff looked at each individual's credentials to determine whether he or she could displace any less senior certificated employees. District staff conducted this inquiry for each affected employee in each service area identified in the Resolution, and in the same order the service area was set forth in the Resolution. District staff completed a "bumping chart" which documents the results of the displacement process. On March 15, 2011, District staff served the Preliminary Notice identified in Finding 7, on the most junior employees affected by the PKS reduction.

Bumping into Classified Temporary Position

13. The Resolution authorizes a 4.25 FTE reduction in K-8 counseling services and a 5.50 reduction in 9-12 counseling services. Karen Joaquin-Coleman has a seniority date of July 15, 2008. She is a temporary, classified employee. She holds a Pupil Personnel Services (PPS) Credential and a Masters Degree in Social Work. She currently fills the position of Behavior Support Chairperson and will continue in that position next year. Her duties are to work with parents, counselors,

³ See Exhibit A.

teachers and principals to create behavioral support plans to address behavioral issues. The position requires knowledge of behavioral intervention techniques and applied behavioral analysis, and requires a Master's degree in applied behavioral science, psychology, social work, sociology, education, mental health related fields or a PPS credential. The position also requires a minimum of three years successful experience in the assessment, planning and implementation of positive behavioral intervention for individuals and groups and experience presenting staff development workshops to adults. Ms. Joaquin-Coleman was hired because of her Master's degree in Social Work and her extensive experience in behavioral intervention and modification.

14. All of the certificated employees affected by the reductions in counseling services are senior to Ms. Joaquin-Coleman and all hold PPS credentials. These respondents (PPS respondents) argued that any of the PPS respondents can bump into the classified position held by Ms. Joaquin-Coleman, because that position description lists a PPS credential as an acceptable educational prerequisite.

15. No authority was presented for the proposition that section 44955, subdivision (d), requires the District to consider classified positions when complying with its duty to "make assignments and reassignments in such a manner that [certificated] employees shall be retained to render any service which their seniority and qualifications entitle them to render." There was no evidence presented that any of the PPS respondents is "qualified" under section 44955, subdivision (d), to serve as Behavior Support Chairperson. The job description requires not only an applicable advanced degree or PPS credential, but significant experience in behavioral intervention, behavioral modification planning and staff development.

16. Counsel for the PPS respondents argued that he did not need to present evidence that any of the counselors is qualified to serve as Behavior Support Chairperson. He maintained that qualifications were not at issue, and that the only issue was the ability of a certificated employee to bump into a classified position. Even if there was authority that a senior certificated employee could bump into a temporary, classified position, it would still be incumbent upon the District to establish that the senior employee was "certificated and qualified" when making the reassignment. While it is the District's responsibility to assess the qualifications of certificated employees to determine if they are qualified to bump certificated junior ones, here respondents have the threshold duty to alert the District to their interest and qualifications to bump into temporary classified positions that are not ordinarily under consideration in a lay off proceeding. Here, the PPS respondents had an opportunity at hearing to present evidence that they were qualified in behavioral modification planning and intervention and in staff development. No such evidence was presented.

17. Accordingly, PPS respondents' position that a senior certificated employee may bump into the position held by a temporary classified employee is rejected. PPS respondents' additional position that they need not make any showing of qualifications to serve as Behavior Support Chairperson is rejected.

Skipping Certain Junior Employees

18. The District seeks to skip certain certificated employees pursuant to section 44955, subdivisions (b), (c) and (d)(1). These sections provide in pertinent part:

(b) ... except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render....

(c) ...services of such employees shall be terminated in the inverse of the order in which they were employed...

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The District demonstrates a specific need for personnel to teach a specific course or course of study ... and that the certificated employee has special training and experience necessary to teach that course or course of study... which others with more seniority do not possess.

[¶...¶]

Skipping Michael Yonan

19. *Michael Yonan and Richard Rocero* were noticed for layoff due to the 1.0 FTE reduction in secondary automotive technology teaching services. The District proposes to skip Mr. Yonan and layoff the senior Mr. Rocero, under section 44955, subdivision (d)(1). Both hold designated subjects vocational-education credentials in automotive repair. Mr. Yonan also holds a single subject credential in industrial and technology education and an administrative services credential.

20. The District maintains that it has a specific need for Mr. Yonan to teach green energy technology at the “Green Academy” at the Weber Institute school site, and that he has special training and experience necessary to teach these courses, which Mr. Rocero does not possess. Mr. Yonan was instrumental in developing the Green Academy and securing a State California Partnerships Academy grant to fund the Green Academy. At this site, students are prepared for college as well as a career in clean energy. Students are educated about green energy and work with solar charging cars and golf carts. They make diesel fuels and use hydrogen fuel cells to

power the electronics of the vehicles. Students are educated in designing wind turbines, solar homes, car fuel conversions, solar components and other green energy projects. Students also take automotive technology courses.

21. The District maintains that in order for the Green Academy to operate as written in the grant, the person occupying Mr. Yonan's current teaching position must be credentialed in industry sectors defined by the California Department of Education. Mr. Yonan and Mr. Rocero hold ASE (Automotive Service Excellence) and ATEC certifications pertaining to the automotive repair aspects of the teaching position. However, only Mr. Yonan has the single subject credential in industrial and technological education which enables teaching the green technology courses.

22. The person occupying Mr. Yonan's position must teach multiple sections of multiple subjects in addition to automotive repair: automotive energy and utilities, engineering and design and transportation. The District provided evidence that it does not have enough funds, enrolled students, or space in the master schedule to support separate credentialed teachers teaching multiple sections of transportation fuels and green energy, green design and automotive classes. The District maintains that if Mr. Yonan is replaced with a teacher who is only credentialed to teach automotive, such as Mr. Rocero, "the Academy structure will be disrupted ... and classes will not be offered...All the work creating a program that enhances the learning and marketability of our students will be lost... The school district would also be out of compliance [with grant requirements] and our grant would be lost."

23. The District has demonstrated a specific need for Mr. Yonan to teach a specific course or course of study, green technology and design. The District has demonstrated that Mr. Yonan has special training and experience necessary to teach this course of study, which others with more seniority do not possess. Therefore, the District may retain Mr. Yonan and lay off the senior employee, affected by the 1.0 FTE in secondary automotive technology teaching services (Mr. Rocero).

Skiping Ansel Eayrs

24. *Ansel Eayrs* (seniority date 8/10/10) was noticed for layoff due to the possibility that he could be bumped by senior teachers.⁴ The District proposes to skip Mr. Eayrs, under section 44955, subdivision (d)(1). Mr. Eayrs is a probationary employee and holds single subject teaching credentials in biological sciences; biological sciences (specialized); science: chemistry; science: geosciences and an administrative services credential. He is AVID certified. He currently teaches honors chemistry to 10th-graders and a ninth-grade academic decathlon honors class at Stockton Unified Early College Academy (SECA). It is anticipated he will be teaching chemistry classes at SECA next year, but not the academic decathlon honors class.

⁴ The District has rescinded Mr. Eayrs' precautionary lay off notice.

25. The District maintains that it has a specific need for Mr. Eayrs to teach chemistry and the sciences at SECA, and that he has special training and experience necessary to teach these courses, which senior employees do not possess. SECA is a new charter school, in its second year. It has 239 students and 10 FTE instructors. SECA is designed to prepare students for college and to provide them with college coursework during their high school years, so that they can enter college at the junior level. SECA provides accelerated and enriched honors and advanced placement classes. All the students are required to take math and pre-calculus, AP chemistry and biology and 9 units of college classes. SECA is currently the highest performing school in the District and one of the highest performing schools in the state. Demographically, the students are 93 percent non-caucasian and economically disadvantaged and 80 percent of the students come from families who have never had a family member attend college.

26. The District maintains that it must retain Mr. Eayrs to continue to provide the accelerated and enriched teaching required by the students. The school is small and Mr. Eayrs has five credentials and AVID certification, which allows flexibility of assignment in chemistry and science classes. The school curriculum will be expanding to include anatomy/physiology, physics, AP biology and AP chemistry over the next two years and Mr. Eayrs' credentials would allow him to teach these courses. He taught five years in the sciences before coming to the District and has been an AVID tutor and has an EL authorization. He has been active in the STEM science program and has been able to work with the University of the Pacific in connection with placing students in college classes. He is the school's "webmaster," is fluent in Spanish and is well liked by the students, families and other teachers.

27. If Mr. Eayrs was not skipped, he would be bumped by Alberto Rodriguez (seniority date 8/27/09). Mr. Rodriguez was affected by the 5.0 FTE in secondary biology teaching services. He was noticed for .20 FTE reduction of his secondary biology teaching services because he only taught .20 FTE in biology. His remaining courses are chemistry courses. Because he holds a single subject in chemistry, Mr. Rodriguez will be able to bump Mr. Eayrs, if he was not skipped. If Mr. Eayrs is skipped, Mr. Rodriguez would bump the next most junior chemistry teacher, Viviana Medina (seniority date 8/31/09). The District maintains that if Mr. Rodriguez bumps into either position he bumps into that position 1.0 FTE, because he "needs a full time position to move into."

28. *Viviana Medina* is a probationary teacher and holds a single subject credential in chemistry (specialized); a single subject credential in foundational level mathematics and a single subject credential in introductory science. She has a BCLAD in Spanish. She maintains that Mr. Eayrs should not be skipped because she is senior to him and has the training and experience necessary to teach the courses he teaches. She points out that she was invited to interview with SECA for a position, but she had already accepted a position at Franklin school.

29. Ms. Medina does not possess a single subject credential in biology or geosciences. SECA wishes to retain Mr. Eayrs because it requires its teachers to have multiple credentials in the sciences to cover multiple assignments and because it expects to add anatomy/physiology, physics, and AP biology to the coursework when it begins its junior level classes in 2011-2012. Ms. Medina maintains that because she holds credentials in foundational level math and in introductory science, she has the flexibility Mr. Eayrs has to teach his classes and the other classes SECA plans to offer. Ms. Medina is mistaken. Her foundational level math and introductory science courses do not permit her to teach beyond introductory courses in these areas. Thus, she does not have the flexibility required to teach in this advanced placement high school setting.

30. Although Mr. Rodriquez has a chemistry credential and a biology credential, no evidence was presented that he possesses the training and experience to teach the classes Mr. Eayrs is teaching and is to teach next year. There was no evidence that a senior teacher possesses this training and experience. The District has demonstrated a specific need for Mr. Eayrs to teach a specific course of study at SECA. The District has demonstrated that Mr. Eayrs, solely because of his multiple science and chemistry credentials and AVID certification, has special training and experience necessary to teach this course of study, which others with more seniority do not possess. Therefore, the District may retain Mr. Eayrs and Mr. Rodriquez may not bump him 1.0 FTE.

31. However, Ms. Medina may not be bumped 1.0 FTE by Mr. Rodriquez, because his position is only reduced by .20 FTE. She may be bumped .20 FTE. Even though the District has an interest in maintaining intact 1.0 FTE positions, it may not administratively create a .80 FTE reduction which was not authorized by the Board in its resolution. (See also Findings 45-46, where this issue is discussed more fully.) The fact that the .80 FTE reduction takes place in the bumping chain, not in the identification of employees whose services are to be reduced under the resolution, does not render the unauthorized reduction legitimate.

32. Here, the District identified 4.20 FTE in secondary biology teaching services to reduce pursuant to the Resolution's authority to reduce these services by 5.00 FTE. If the District wished to lay off the full 5.00 FTE it was authorized to lay off, the appropriate course would have been to identify the next least senior person occupying .80 FTE in secondary biology teaching services, and to notice that .80 FTE. Instead, the District effectively reduced a .20 FTE in biology *and* a .80 FTE in chemistry, when Mr. Rodriquez bumped Ms. Medina out of .80 FTE chemistry.

33. Thus, Ms. Medina is entitled to a .80 FTE rescission of her preliminary notice and Mr. Eayrs is entitled to a 1.0 FTE rescission of his precautionary notice, if any.

Skipping Russell Lewis

34. *Russell Lewis* (seniority date 8/7/06) was noticed for layoff as part of the 14.50 FTE secondary social science teaching services reduction. However, the District proposes to skip Mr. Lewis, under section 44955, subdivision (d)(1). Mr. Lewis is a permanent employee and holds a designated subjects career technical credential in public service and a single subject teaching credential in social science. He holds a bachelor's degree in political science and a law degree from University of Pacific McGeorge School of Law. Mr. Lewis currently teaches law and society and honors world history at SECA. He will teach AP US History to the junior class next year. He is also the faculty advisor to the student disciplinary court and the assistant mock trial coach. He has created curriculum for numerous classes, including law and society, mock trial and legal studies (a ROP class). Because of his qualifications and the special relationships he has developed with students and stakeholders in the SECA community, the District wishes to skip Mr. Lewis.

35. *Kyle Moore* received a layoff notice as part of the 14.50 FTE secondary social science teaching services reduction. He holds a single subject teaching credential in social science and is senior to Mr. Lewis. If Mr. Lewis is not skipped, the District intends to rescind Mr. Moore's preliminary notice and to issue Mr. Lewis a final notice. If Mr. Lewis is skipped, the District intends to issue a final notice to Mr. Moore.

36. Mr. Moore maintains that Mr. Lewis should not be skipped. He also maintains that the District over noticed secondary social science teaching services, in that the District was authorized to reduce 14.50 FTE of these services and in fact reduced the services by 16.0 FTE.

37. The District has not demonstrated a specific need for Mr. Lewis to teach a specific course of study at SECA. The AP history courses Mr. Lewis will teach next year can be taught by Mr. Moore, or other senior teachers with a single subject teaching credential in social science. It may be beneficial for SECA to have an attorney teaching law related classes and assisting with the student disciplinary and mock trial programs. And, Mr. Lewis's career technical credential in public service is valuable in teaching these classes as well. But, the evidence did not establish that the career technical credential in public service is necessary to teach these classes. Although Mr. Lewis may have been and may still be the "best candidate" to fill his position, the Education Code does not permit districts in a layoff proceeding to weigh the qualifications of teaching staff and retain junior employees it believes have superior qualifications. The District must show that the skipped teacher has special training and experience *necessary to teach* the specific courses. The District has not met that burden. Mr. Lewis may not be skipped. Because Mr. Lewis may not be skipped, Mr. Moore's preliminary notice must be rescinded. Accordingly, his additional argument regarding over noticing this service category was not considered.

The over-noticing issue does not apply to Mr. Lewis, as his position is the 14th FTE in the 14.50 FTE reduction for secondary social science teaching services.

Math Vacancy

38. The Resolution authorized a 17.0 FTE reduction in secondary math teaching services. Seventeen secondary math teachers were issued preliminary notices of layoff. Certain respondents maintain that the District should have noticed only 16 secondary math teachers, because there is going to be a vacancy at Edward C. Merlot Institute of Environmental Technology (grades 9-12) (Merlot) in the 2011-2012 school year. While identifying those subject to multiple subject reduction, it was discovered that Tiffany Ponte, who holds a multiple subject credential, was teaching high school math at Merlot and thus was misassigned. She will not be filling the math position at Merlot High School in 2011-2012. Thus, the respondents argued that the position is vacant and should count toward the 17.0 FTE reduction in secondary math teaching services. The District maintains that the misassignment was not discovered until after the Resolution was passed, and the District took into account all known attrition at the time individuals were identified for layoff. Additionally, the District maintains that the position is not vacant at the present time and thus need not be considered as a current vacant position in the layoff proceedings. The District advised that the position will be filled according to District procedures for filling vacant positions.

39. In layoffs based upon a reduction or discontinuance of PKS, the District is not required to consider positively assured attrition that occurs between the date of the preliminary layoff notices and the final layoff notices. (*San Jose Teachers Assoc. v. Allen* (1983) 144 Cal.App.3d 627, 636.) There is no requirement that “known attrition” be limited to retirements, resignations and deaths. Here, the evidence is that Tiffany Ponte’s misassignment was discovered before the preliminary notices were served. The misassignment was discovered prior to or at the time that the District was examining which teachers would be affected by the reduction in secondary math teaching services. It would have been appropriate to consider this position as a math vacancy, or as positively assured attrition, because it was known that the position would be vacant in 2011-2012 school year.

40. *Irene Hill* is the only permanent employee affected by the reduction in secondary math teaching services. She holds a single subject in foundational level mathematics. If the position being vacated by Tiffany Ponte is considered a vacant position, Ms. Hill would not be subject to layoff. However, *Catherine Wheeler* has the same seniority date as Irene Hill, and was subject to application of math tie-breaking criteria with Ms. Hill. After application of the tie breaking criteria, Ms. Wheeler was considered more senior than Ms. Hill. Ms. Hill received a lay off notice for the math reduction, Ms. Wheeler did not. Instead, Ms. Wheeler was bumped by senior Jennifer Powell, who was being laid off for multiple subjects and also held a

foundational level math credential. Ms. Wheeler received a lay off notice because of this bump.

41. Ms. Wheeler argues that she should be retained to fill the Merlot position. Ordinarily, Ms. Hill would be retained as the most senior of the secondary math teachers subject to lay off, but Ms. Wheeler is senior to her, holds a math credential, and could bump her. Accordingly, Ms. Hill may be served with a final notice of layoff, but Ms. Wheeler may not.⁵

Digital Arts Reduction

42. *Mark Hall* was affected by the 1.50 FTE reduction in secondary digital art teaching services. Mr. Hall and junior teacher Thomas Hermansen were each noticed for 1.0 FTE layoff. Mr. Hermansen, because he held a single subject in art, bumped Valrie Jensen 1.0 FTE. Ms. Jensen's lay off notice was rescinded, and Mr. Hermansen will be retained to teach under his art credential.

43. Mr. Hall holds a designated subjects vocational education teaching credential in fire control and safety and the same credential in firefighting. He also holds a designated subjects vocational education teaching credential in graphic arts. He teaches at Merlot and maintains that he teaches only one class in digital arts (15 percent assignment) and the rest of his assignment is in "environmental technology components" and "spatial." He maintains that he should only have been laid off 15 percent of his position, because the resolution authorized only a reduction in digital art teaching services. He points to the fact that when Mr. Rodriguez was affected by the 5.0 FTE in secondary biology teaching services, he was noticed for .20 FTE reduction of his secondary biology teaching services because he taught .20 FTE in biology and .80 FTE chemistry (Finding 27). Mr. Hall's argument is not persuasive. He teaches all of his current classes under his teaching credential in graphic arts. The evidence is not persuasive that his classes are not digital art teaching services. For instance, some of the technology classes he teaches are "spatial." Conversely, Mr. Rodriguez taught under separate biology and chemistry single subject credentials, and only biology was affected.

44. Mr. Hall also maintains that he should be retained because the junior Mr. Hermansen is being retained. This argument is not persuasive because Mr. Hermansen is being retained to teach art under his single subject in art, not graphics courses. Mr. Hall maintains that he should be able to teach the graphic arts classes Mr. Hermansen teaches. However, these classes are being eliminated pursuant to the PKS reduction.

⁵ Catherine Wheeler had a challenge to the application of tie breaking criteria 6, alleging that the criteria was misapplied and that she should be senior to all of the math teachers in the tie breaker. This argument had no merit and is not discussed herein because Ms. Wheeler prevailed on other grounds.

45. Finally, Mr. Hall maintains that the District improperly eliminated 2.0 FTE in secondary digital art teaching services when the Resolution authorized 1.5 FTE elimination. The District maintains that it does not wish to have part time teachers in its high schools and so at times will round down a fraction in an FTE reduction, and at times will round that fraction up, as it did here, laying Mr. Hall off 1.0 FTE instead of .50 FTE. Respondents contend that if the District had a policy of avoiding part time reductions, the Board would not have authorized fractional reductions.

46. Regardless of the District's policies or the Board's intentions, the District may not lay off more FTEs than the Board authorizes in its Resolution. The Board may reasonably over-notice with preliminary notices to ensure that, after bumping and skipping, the designated reductions can take place. However, the ultimate reduction in force must not be higher than the number of FTEs authorized by the Resolution. Pursuant to section 44955, subdivision (b), the District is only permitted to lay off a "corresponding number of employees" relating to its PKS reduction in force. Therefore, Mr. Hall's position may only be reduced by .50 FTE and .50 FTE of his preliminary notice must be rescinded.

Alternative Education

47. *Michelle Munoz* was affected by the 127.0 FTE reduction in elementary teaching services. She holds a multiple subject credential and an administrative services credential. She testified that she is qualified to teach the alternative education high school English class taught by junior teacher *Susan Lockman*. The District requires that those teaching in alternative education high schools have NCLB highly qualified certification in the subject matters they are teaching. Ms. Munoz maintains that she took the CSET (California Subject Examination for Teachers) in English and in multiple subjects and is therefore highly qualified in these areas. She testified that she believes she submitted the CSET results to the District early in the school year. She testified that she needs one more class before she can obtain an English credential and that she has significant experience in alternative education and is AVID trained. She provided no evidence that she has taught English. The District had no record Ms. Munoz is NCLB compliant in English. Ms. Munoz did not bring any such evidence to hearing. District staff had notified teachers that they should fill out a consent form if they were interested in bumping into alternative education. Ms. Munoz filled out the form but did not state that she was NCLB compliant in English or that she had taken the CSET.

48. Ms. Munoz has not established that she is certificated and competent to bump into the position held by Susan Lockman. The District issued a precautionary layoff notice to Susan Lockman, anticipating that one of the respondents may be able to bump her out of her position. Only Ms. Munoz maintained that she could bump Ms. Lockman. Accordingly, the precautionary layoff notice issued to Susan Lockman must be rescinded.

Other Defenses to Layoff

49. Any other assertions raised by the parties at hearing which are not addressed above are found to be without merit.

LEGAL CONCLUSIONS

1. As set forth in the Findings, all notice and jurisdictional requirements set forth in sections 44944 and 44945 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. The services identified in PKS Resolution No. 10-27 are particular kinds of services that may be reduced or discontinued under sections 44949 and 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. The preliminary layoff notices of the following respondents must be rescinded (partially rescinded for Viviana Medina and Mark Hall) because the District is retaining junior employees to provide services which these respondents are certificated and competent to render:

Viviana Medina .80 FTE (Findings 24-33)

Kyle Moore (Findings 34-37)

Catherine Wheeler (Findings 38-41)

Susan Lockman (Findings 47-48)

Michael Yonin (Findings 19-23)

Mark Hall .50 FTE (Findings 42-46)

5. Except as set forth in Legal Conclusion 4 and the Findings, no employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render.

6. Except as set forth in Legal Conclusion 4, the Board may give respondents final notice before May 15, 2011, that their services will not be required for the 2011-2012 school year.

RECOMMENDATIONS

1. Except as set forth in Legal Conclusion 4, the Accusations served on respondents are sustained.

2. Notices of layoff shall be rescinded and partially rescinded, as to the certificated employees listed in Legal Conclusion 4.

3. Final Notices shall be given to the remaining respondents identified in attached Exhibit A that their services will not be required for the 2011-2012 school year because of the reduction or discontinuation of particular kinds of services.

4. Final Notices shall be given to respondents in inverse order of seniority.

Dated: May 5, 2011.

ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A
TO PROPOSED DECISION
STOCKTON UNIFIED SCHOOL DISTRICT
REDUCTION IN FORCE
LIST OF RESPONDENTS

ABELLANA-DELVO,
REBECCA
ADAM, KATHY
ADKINS, BABETTE
AHN, KEVIN
ALLEN, SHANTE
ALMAREZ, KIM
ALSTON, AMBRIA
ANDAYA, HILARY
ANTOLIN, DIANA
ATAD-BURGESS, GINA
AUSTIN, BEA
AUSTIN, RADAVON
AVALOS, CASEY
AZEVEDO, ALEX
BABCOCK, BRYAN
BANKS, TIFFANY
BATES, AUTUMN
BATES, CHRISTOPHER
BATION, MARISSA
BEAR, ANDREA
BERLINSKI, JUDITH
BORBA, SAMANTHA
BOWMAN, ELIZABETH
BOYD, JANET
BRENNAN, TRACY
BRIDGES, BRIAN
BROWN, CHRISTOPHER
BROWN, DOMINIQUE
BURNS, ABBI
BURNS, KATHERINE
CAHILL, JOANNA
CALDER, TREVOR
CALDERON, MARIA
CARMON-KORMEN,
STACI
CARRILLO, BLANCA
CASTANEDA, VICTOR
CHHIN, PISEY
CHHIV, SOPHEAK
CIOTAU, LIGIA
CLEGG, BRIANNA
CLEMENTE, ALFONSO
COIL, CHUCK
DAVIS, MICHAEL
DE LA CRUZ, REBECCA
DECOITO, FREDRICA

DEL BARBA
DOMINGUEZ, LAURA
DOUGLAS, SHELESE
DOUGLASS, DONNA
DOYAL, MISTY
DU QUETTE, AIMEE
DUGO, KATHARYN
DURAN, ALEJANDRO
ELIZALDE, BETSABE
ERICKSON, ADRIANNE
ESCOBAR, ANAMARIE
ESCOBAR, CINDY
ESPITIA, HEATHER
FERREIRA, SHILOH
FOSHEE, REN
FOX, YAMILET
GAEA, TIMOTHY
GALLAGHER, BRIDGET
GARBEFF, EVANGELINE
GAYTAN, FANY
GIAMBRUNO, VICTORIA
GIFFORD, DEBBIE
GIRLEY-GROSS, RETTA
GLASS, RICHARD
GONZALES, MADALYN
GONZALEZ, NICOLE
GORDON, GARDALE
GRIGSBY, TRINA
GRIMSHAW, BOYD
GUYTON, AURORA
GUZMAN-RICO,
GERARDO
HALEY, NATHAN
HALL, MARK
HAMMER, LAURA
HARDIN, JILL
HARVIN, GARY
HAYNES, GARTH
HER, XEE
HEU, MARIA
HILL, IRENE
HOANG, UYEN
HOLLENBECK, MARY
HOLMAN, CONSTANCE
HOPSON, MICHAEL
HORACE, SUZANNE

HUERTA BLANCO,
NICOLAS
HUFFMAN, JEANNINE
HUGHES, EVE
HULEN, ROBERTA
HURTADO, TOMAS
IBARRA-PANTOJA,
ANGELICA
JIMENEZ, OLIVIA
JOHNSON, KILA
JONES, DEANNA
JONES-HAMILTON,
REGINA
JUAREZ, JULIE
KANESTROM, JANE
KATEN, CHRISTINA
KEYES, DEBRA
KHAN, SHAMSA
KLINGELSMITH, DANIEL
KNIEF, ERIN
KOENIG, PA
KWAN, DEBORAH
LAUCHLAND, KORI
LEE, KARINA
LEWIS, CECILIA
LEWIS, RUSSELL
LO, NOU
LO, PING
LOCKMAN, SUSAN
LOGAN, BEVERLY
LOPEZ, JULIO
LOYD, SHANNON
MACKINNON, KELLIE
MAGANA-RULEY,
MARTHA
MANKA, JEANNINE
MARGARITE, STEVEN
MARING, NANCY
MARTIS, ELLEN
MASON, ANNE-MARIE
MATA, SILVIA
MATERS, BARBARA
MCCARTY, ELANE
MCGILL, PHILIP
MCQUINN, MAUREEN
MEATH, SUSAN
MEDINA, VIVIANA

MILLER, THOMAS
MINGUA, DEBBIE
MITTELSTEDT, DONNA
MOORE, CARLY
MOORE, KYLE
MORADO-FERNANDEZ,
AGUSTIN
MUNOZ, MICHELLE
MURRIETA, MARIA
NAVARRETE, RACHAEL
NELSON, CARIN
NGUYEN, HUNG
NICKOLS, CHELSEA
OLD, ELIZABETH
ORTEGA, TALIA
OU, RAVY
OWENS, NATALEE
PAGNINI, JULIE
PAGNOSSIN, ROZANNE
PANTOJA, VILMA
PENA, ANNA
PERALTA, GINA
PEREIRA, MARIA
PEREZ, JULIO
PEREZ, NIKOLE
PHAM, ANH THU
PITCHFORD, AIMEE
PONTE, TIFFANY
POTTER, SHANNON
QUICK, SONDRAL
RAHE, HOLLIE
RANKIN, LISA
RIGG, ELIZABETH
RINGER, BARBARA
RIVERA, PATRICIA
RIZZUTO-RODRIGUES,
CRYSTAL
ROBERTS, EMILY
ROCERO, RICHARD
ROIDER, EARL
RYAN, JENNIFER
SAM, CHANSOPHORN
SANACHAY, OURAY
SANDOVAL, DANIEL
SANTOS, DAVINA
SCHREIBER, EMILY
SCHUMACHER, SONYA
SCOTT, KOURTNEY
SERPA, DAVID
SHANKEL, STACEY
SHAW, FRANK
SHROYER, MICHAEL
SIMMONS, SHERYL
SINGLETON, DEVYN
SOZA, EZEKIEL
STEVENSON, MARIA

STODDARD, CLINTON
STONE, KIMBERLY
TABANGCURA, DYNA
THOEUN, CHANTHOU
THOMAS, TIJI
THOMPSON, FRANCIS
TRACY, TONY
TUN, VIRY
VANG, JUDY
VANG, LEE YANG
VILLALOBOS,
GUADALUPE
VOSBURG, MARY
VOYER, NATHAN
WALKER, DOROTHY
WALTHER, AMANDA
WARREN, BETTY
WHEELER, CATHERINE
WHITMER, KAREN
WIELAND, ELIZABETH
XIONG, LEE
XIONG, SARIAH
XIONG, SOUA
YONAN, MICHAEL
YU, LEANNE
ZAICH, HAUNA
ZEYEN, VICKI